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IOWA LEGISLATIVE INTERIM CALENDAR AND BRIEFING

December 29, 2011

2011 Interim No. 11

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Wednesday, January 4, 2012

Administrative Rules Review Committee

9:30 a.m., Room 22, Statehouse

Monday, January 9, 2012

Eighty-fourth General Assembly, 2012 Regular Session Convenes

10:00 a.m., Senate and House of Representatives

Iowa Legislative Interim Calendar and Briefing is published by the Legal Services Division of the Legislative Services Agency (LSA). For additional information, contact: LSA at (515) 281-3566.

AGENDAS

INFORMATION REGARDING SCHEDULED MEETINGS

Administrative Rules Review Committee

Chairperson: Senator Wally Horn

Vice Chairperson: Representative Dawn Pettengill

Location: Room 22, Statehouse

Date & Time: Wednesday, January 4, 2012, 9:30 a.m.

Contact Persons: Joe Royce, LSA Counsel, (515) 281-3084; Jack Ewing, LSA Counsel, (515) 281-6048

Agenda: Published in the Iowa Administrative Bulletin:

<http://www.legis.state.ia.us/aspx/BulletinSupplement/bulletinListing.aspx>

ADMINISTRATIVE RULES REVIEW COMMITTEE

December 13, 2011

Chairperson: Senator Wally Horn

Vice Chairperson: Representative Dawn Pettengill

DEPARTMENT ON AGING, *Department Planning Responsibilities*, 11/30/11 IAB, ARC 9864B, NOTICE, ARC 9863B, EMERGENCY.

Background. 2011 Iowa Acts, HF 45, §20, requires the department to develop a plan for reducing the number of area agencies on aging (AAAs) in the state, effective July 1, 2012. The department must submit the plan to the standing committees on Human Resources of the Senate and House of Representatives and the Joint Appropriations Subcommittee on Health and Human Services on or before December 15, 2011. The department has filed emergency rules to rewrite existing provisions relating to its planning responsibilities.

Commentary. A department representative laid out the various changes made to the department's Administrative Code chapter on AAAs in order to comply with the requirements of HF 45. Particularly significant are procedures for designating and dedesignating planning areas. The representative stated that many of the changes are necessary for compliance with federal law, including setting out clear due process procedures for changes to AAAs. The representative explained that a statutory requirement that the state maintain 13 AAAs would need to be repealed during the 2012 Legislative Session in order to implement the reduction in number. The representative also noted that five AAAs in western Iowa are already making plans to combine.

Committee members expressed concern about the ability of larger, consolidated AAAs, particularly in western Iowa, to adequately meet the needs of seniors. The department representative explained that the consolidated AAAs would not be so reliant on centralized staff to cover large areas, but would include more localized staff who would be more responsive to the needs in their areas. Committee members pointed out that bringing better service to rural areas was one of the main goals of regionalization of AAAs.

Action. No action taken.

IOWA FINANCE AUTHORITY, *Low-income Tax Credit Program*, 11/2/11 IAB, ARC 9837B, NOTICE.

Background. These amendments replace the current 2011 qualified allocation plan (QAP) for the Low-income Housing Tax Credit Program with the 2012 QAP, which is incorporated by reference in the rulemaking. The 2012 QAP sets forth the purpose of the plan, the administrative information required for participation in the program, the threshold criteria, the selection criteria, the postreservation requirements, the appeal process, and the compliance monitoring component. The plan also establishes the fees for filing an application for low-income housing tax credits and for compliance monitoring.

Commentary. An Iowa Finance Authority (IFA) representative explained the process of transitioning from the 2011 QAP to the 2012 QAP. Public comment was heard from stakeholders in the affordable housing industry who raised several concerns about the changes made to the QAP. Stakeholders asserted that an unprecedented change to the QAP criteria had been made in 2009 without explanation to the stakeholders. That change resulted in the loss of credit points for certain projects for which the tax credit was sought. The change was a new specification that tax abatements, but not tax exemptions, would be considered among the criteria, when no basis for such a distinction is found in statute and both are relevant to the localized purposes of the tax credit. Stakeholders also asserted that the tax credit had been awarded increasingly to projects in urban areas over rural areas, and that all available funds for the tax credit were not being used every year due to the changes in criteria.

The IFA representative replied IFA's decisions on these matters were based on "precatory" (i.e., nonbinding) principles found in statute, so changes to the QAP criteria need not be specified in the statute. The representative asserted that tax exemptions are not localized in nature, and as such, should not be considered for the purposes of awarding the tax credit, which is intended to encourage local communities to have a financial stake in projects funded by the tax credit. The representative admitted that the tax credit has increasingly been awarded to urban areas, but noted that IFA has been attempting to address this disparity through a different project.

The stakeholders disagreed with the IFA representative's assertion that tax exemptions are not local in nature, noting that decisions regarding tax exemptions are made by local assessors who choose to give up that revenue, as is the case with tax abatements, which are included in the QAP criteria. The representative replied that tax exemptions are the result of decisions made by the General Assembly, not by local authorities, regardless of who ultimately approves them. Committee members noted that tax exemptions are statutory, and not discretionary on the part of local authorities in the manner provided by tax abatements and other factors included in the QAP. Other committee mem-

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bers asked what precisely determines which factors not listed in statute are included in the QAP criteria. The representative replied that these decisions are generally guided by federal law.

Action. No action taken.

NURSING BOARD, *Board Rules of Procedure*, 11/30/11 IAB, ARC 9866B, NOTICE.

Background. Iowa Code §17A.3 requires that all agencies “[a]dopt as a rule a description of the organization of the agency which states the general course and method of its operations...” Many boards and commissions have adopted Robert’s Rules of Order to implement this requirement.

Commentary. On advice of the Attorney General, the board proposes to eliminate any reference to Robert’s Rules from its rules of organization and operation. Instead, the board proposes a general rule stating that the board will: “conduct its proceedings to ensure that all members have equal rights, privileges and obligations.” It was noted that all professional licensing boards have rescinded similar rules, with the Nursing Board being the last board to retain Robert’s Rules. [Note: many state boards and commissions continue to cite and use Robert’s Rules.] A representative from the Attorney General stated this action would prevent an agency action from being invalidated for a procedural error. The representative stated this change would ensure that agency actions were litigated on the substantive merits of that action, not on some procedural flaw. The representative noted that Iowa’s Open Records Law and the Open Meetings Law protect the public. In response to a committee question, the agency representative did state that the use of Robert’s Rules had created no legal problem.

Committee members were skeptical concerning the new standard; members contended that “equal rights, privileges and obligations” does not provide any detail to adequately guide board deliberations.

Action. No action taken. Additional review is likely on final adoption.

DEPARTMENT OF TRANSPORTATION, *Travel Trailer Dealers*, §§425.3, 425.10 IAC, SPECIAL REVIEW.

Background. Iowa Administrative Code chapter 761-425 provides for the licensing of motor vehicle dealers and travel trailer dealers. A licensee must maintain a principal place of business, which must be staffed during regular business hours, not less than 32 hours per week. Iowa Code §§322.2 & 322C.2 provides that the place of business must have facilities for the display of vehicles and for repairing or reconditioning of vehicles.

Commentary. Committee members questioned whether it is necessary to specify hours of operation as part of a regulatory program. A department representative explained the purpose of the rules is to protect the customer by ensuring that the business that sold the trailer would be available at reasonable times to service the trailer. The representative noted that only one waiver had been granted allowing a dealer to close during the winter months, when business activity is negligible. That same dealer also spoke, noting that his cell phone remains active allowing customer contact on an as needed basis. Industry representatives supported the program.

Action. No action taken.

Next Meeting. The next regular committee meeting will be held in Committee Room 22, on Wednesday, January 4, 2012, beginning at 9:30 a.m.

Secretary, ex officio: Stephanie Hoff, Administrative Code Editor, (515) 281-3355.

LSA Staff: Joe Royce, LSA Counsel, (515) 281-3084; Jack Ewing, LSA Counsel, (515) 281-6048.

Internet Page: <http://www.legis.iowa.gov/Schedules/committee.aspx?CID=53>

MENTAL HEALTH AND DISABILITY SERVICES STUDY COMMITTEE

December 19, 2011

Co-Chairperson: Senator Jack Hatch

Co-Chairperson: Representative Renee Schulte

Charge. The study committee was created by the Legislative Council with the following charge: Review publicly supported mental health and disability services (MH/DS). The study committee shall closely engage with, monitor, and propose legislation concerning the recommendations and proposals developed by the workgroups implemented by the Department of Human Services (DHS) and other bodies addressed by 2011 Iowa Acts, SF 525. The legislators serving on the interim committee and other interested legislators are authorized to participate in the meetings of the workgroups and subcommittees addressed by the legislation. In addition to the workgroup recommendations, the study committee shall address property tax issues, devise a means of ensuring the state maintains its funding commit-

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ments for the redesigned services system, recommend revisions in the requirements for mental health professionals who are engaged in the involuntary commitment and examination processes under Iowa Code chapter 229, recommend revisions to the Iowa Code chapter 230A amendments contained in SF 525 as necessary to conform with the system redesign proposed by the study committee, develop proposed legislation for amending Code references to mental retardation to instead refer to intellectual disabilities, and consider issues posed by the July 1, 2013, repeals of county disability services administration and funding provisions in 2011 Iowa Acts, SF 209. In addressing the repeal provisions, the study committee shall consider all funding sources for replacing the county authority to levy for adult disability services.

Background. DHS initiated seven workgroups to develop proposals and recommendations for the study committee for redesign of the services systems. Most of the workgroups met every other week from mid-August until the end of October. In addition, DHS held several public hearings in locations around the state. DHS submitted a preliminary report to the study committee on October 31, 2011, and a final report on December 9, 2011. Information concerning the workgroups is posted on this Internet page: <http://www.dhs.state.ia.us/Partners/MHDSRedesign.html>.

The workgroups that reported at the end of October are as follows:

- Adult Mental Health System Redesign Workgroup (MH)
- Best Practices and Program for Persons with Brain Injury Workgroup (BI)
- Adult Intellectual and Developmental Disability System Redesign Workgroup (ID-DD)
- Children's Disability Services Workgroup (Children)
- Regionalization Workgroup (Regional)
- Judicial Branch and DHS Workgroup (Judicial-DHS)
- Psychiatric Medical Institutions for Children (PMIC) Transition Workgroup

Overview. The primary focus of the meeting was the Iowa Mental Health and Disability Services Redesign interim report submitted to the study committee by DHS on October 31, 2011. One or more representatives of each workgroup described the workgroup membership, a summary of key recommendations, areas of consensus and opinion differences, and responded to questions. In addition, testimony concerning the redesign proposals was provided by representatives of residential care facilities and members of the public. Each workgroup presented a short summary of its findings and recommendations that are posted on the study committee webpage along with the full interim report and other materials. The committee used the DHS final report as a base document in forming recommendations.

DHS Final Report. Mr. Charles Palmer, DHS Director, and Mr. Rick Shults, DHS Division Administrator, discussed the DHS written report and responded to questions. The DHS report emphasizes, clarifies, and deviates from various aspects of the interim report submitted to the committee in October 2011. In addition, the final report provides cost estimates and a phased-in financing plan to implement the redesign. The phase-in period begins with FY 2011-2012 and continues through FY 2016-2017. DHS supports nearly all of the interim report.

DHS emphasized three areas of redesign: Management and structure based upon regions governed primarily by county supervisors who will oversee administrative management and "backroom" functions (such as billings and payments); services, including basic services which are currently provided in most of the state and new critical core services to be phased in; and financing in which the state assumes responsibility for the nonfederal share of Medicaid services, which is currently a county responsibility, and for growth in costs and the new critical core services.

DHS Report—Management and Structure. As to the regional structure, DHS emphasized that property tax-related decisions should be made by elected officials but regions should have flexibility to involve consumers, family members, and service providers in other decisions. DHS deviated from the interim report in recommending flexibility for counties to use a "virtual" pooling approach rather than being required to actually mingle the county funds into one separate account. DHS should be allowed to grant waivers if the population criteria is unworkable for a particular grouping of counties. If a percentage cap on administrative costs is implemented, the definition of administrative functions should be revisited. Centralization of "backroom" functions should be encouraged.

County central point of coordination administrators would no longer perform the current administrative responsibilities but could continue to serve as the local access point for consumers and families and perform regional functions. Local financial responsibility would be determined based upon the service consumer's residency rather than the current county of legal settlement approach. There was significant discussion of residency issues, including whether county residency would shift to regional residency. The proposal also provides for consumer appeals of regional decisions involv-

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ing eligibility and services to be resolved through the state administrative law process and for regions to utilize the same uniform cost-reporting and rate-setting process. DHS proposes to accelerate the formation period for regions outlined in the interim report so that counties must be part of a region by November 2012.

DHS Report—Services. The DHS proposal listed new expanded or critical core services and included a financing proposal to phase in the new services. Eligibility provisions were expanded upon to specify that certain diagnoses, in the absence of other diagnoses, should not be used for eligibility for adult MH services; if the federal Affordable Care Act is implemented, an increase from the proposed 150 percent of the federal poverty level (FPL) to 200 percent of FPL should be considered for income eligibility; implementation of certain functional assessment tools were recommended for various disabilities; continued exploration of expanding the Medicaid home-and community-based services waivers to address developmental disabilities other than intellectual disability; and allowing providers of non-Medicaid services to waive copayments under certain circumstances. The proposal also provides for new workgroups and other efforts to address outcome and performance measures and workforce development.

DHS Report—Financing. The proposal for financing is to redirect state funding that would otherwise be provided to counties for MH-DS in FY 2012-2013 to instead be used to increase appropriations for the state to assume responsibility for Medicaid costs that would otherwise be a county responsibility. Unless a change is made, the county responsibility for the nonfederal share of Medicaid in FY 2012-2013 is otherwise expected to be approximately \$231 million. Implementing this proposal would allow counties to avoid applying large reductions in non-Medicaid services in order to maintain their Medicaid funding responsibilities. The net increase in General Fund of the state appropriations under this proposal after redirecting the funds that would otherwise be provided to counties would start with \$42 million in FY 2012-2013, and cumulatively increase to \$133 million in FY 2016-2017. The proposal incorporates an annual 3 percent increase in overall costs that would be borne by the state. Savings are assumed from opting into the federal Balancing Initiative Program and implementation of the federal Affordable Care Act.

DHS Report—Discussion. The projections in the DHS proposal do not include funding for service expansions other than those delineated in the proposal and there is member interest in clearing the waiting lists currently in effect for Medicaid waiver services and addressing the needs of underserved populations. Some members questioned the adequacy of resources for technical assistance to formation of regions, the speed of the time frame proposed for formation of regions, and whether requiring a region to have at least three counties is appropriate.

Property Tax—Financing Redesign. Legislative Services Agency (LSA) staff Mr. Jess Benson and Mr. Jeff Robinson, Fiscal Services Division, and Mr. Michael Duster and Mr. John Pollak, Legal Services Division, discussed a list developed by nonpartisan and partisan legislative staff of issues and considerations for addressing property taxation in a MH-DS redesign. Current law provides for repeal of the county service management and state and county funding provisions for these services on July 1, 2013, but retains the legal mandates for county funding of the services. The information provided scenarios for equalizing county property taxation for these services based upon school aid finance concepts. Members noted that as a result of the current dollar caps on property tax levies for MH-DS, many urban counties or other counties with significant population growth since the mid-1990s are being subsidized by state tax funding. Members agreed any financing plan should include a local contribution of at least the current level of \$122 to 125 million.

Recommendations. Initially, the committee began by approving individual recommendations addressed in the DHS final report. The committee was working from a spreadsheet that had compiled summary recommendation provisions from documents submitted by individual workgroups for presentations at the committee's November 2011 meeting. The committee approved a recommendation on page 6 of the DHS report that there be a definition of what is included in the legislatively proposed 5 percent cap on regional administrative costs. However, following party caucuses and the luncheon recess, the committee shifted course. Noting that the 22-page DHS final report had largely accepted the much lengthier 169-page interim report, it was proposed to direct staff to draft the elements of the combined reports in bill form, except where the committee approved changes.

There was extensive discussion of various elements of the reports. Many differences of opinion were resolved with expressions of intent to proceed with the DHS recommendation for the time being but to have further debate during the legislative process on the legislation drafted from the recommendations. The co-Chairpersons plan to request authorization from legislative leaders to proceed with a joint approach to consideration of the bill. The committee will also request authorization from leaders for the committee to meet to approve the proposed bill draft when it is completed, likely sometime in January 2012.

The changes made by the committee from the interim report as modified by the DHS final report, for purposes of bill drafting, include the following:

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1. Do not include appropriation provisions.
2. Modify the proposal for DHS to be directed to review and make recommendations for what a sufficient funding level for non-Medicaid services and services to non-Medicaid eligible services should be in order to require the review to be performed in consultation with consumers, services providers, and counties/regions.
3. A statement on page 12 of the DHS report notes that the department's proposal does not include funding to eliminate Medicaid home-and community-based services waiver waiting lists because it is beyond the scope of SF 525. The committee approved a directive to DHS for a review of the current waiting lists in order to eliminate them. The directive was expanded to include development of a more equitable approach to managing the Medicaid waiting lists to address the situation where a person who receives waiver services in this state but who temporarily relocates to another state is then placed at the bottom of the waiting list upon returning to this state.
4. A requirement for each region to have a regional advisory committee to consist of consumers, service providers, and regional governing board members.
5. Regarding the Children's Services Workgroup, which is slated to continue deliberations during 2012, that the charge for the workgroup for 2012 is to submit a proposal for an integrated children's system involving child welfare, juvenile justice, children's mental health, education, and the usage of the health home approach. In addition, it was recommended that cost estimates be developed for the workgroup proposals.
6. Regarding the Brain Injury (BI) Workgroup, which also was authorized by SF 525 to continue deliberations in 2012 but had completed its report, that approval be given to the workgroup recommendation for continuing current BI services as core services, that the workgroup be asked to prioritize its recommendations for optimized, expanded, and new core services, and that DHS develop cost estimates for what is recommended.
7. Regarding the Judicial-DHS Workgroup recommendations, these recommendations will be drafted in a separate bill. In addition, it was recommended that cost estimates be developed for the recommendations.
8. That the proposal approved at the committee's October meeting to change Iowa Code references from the term "mental retardation" to "intellectual disability" and from the term "adult day care" to "adult living services," be included in the draft legislation.

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Internet Page: <http://www.legis.iowa.gov/Schedules/committee.aspx?CID=541>